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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.9314 OF 2007**

S.Motilal Plywood House
through Proprietor
Surendra Motilal Lodha ... Petitioner

V/s.

Sangli Miraj Kupwad City
Municipal Corporation & anr. ... Respondents

Ms.Varsha Palav i/by Sangram Pawar for the petitioner.
Mr.N.V.Walawalkar, Sr.Advocate i/by Sudhir Prabhu for Resp. No.1.
Mr.V.A. Sonpal, AGP, for Respondent No.2

CORAM: **J.N. PATEL &**
**SMT.NISHITA MHATRE, JJ.**

DATED: **DECEMBER 20, 2007**

**P.C.:**

. Heard learned counsel for the parties. In this writ petition, a very interesting and short point is involved which has driven the petitioner to this court for invoking its extra-ordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

2. The petitioner responded to the tender issued by the respondent Sangli Miraj Kupwad City Municipal Corporation for collection of octroi for the Respondent corporation for the period from 1.12.2007 to 30.11.2008. The petitioner was the only person who responded to the tender and quoted the amount of Rs.41,04,00,000/- which was duly accepted by the respondent No.1 vide its acceptance letter dated 30.11.2007 and the contract came to be awarded to the petitioner.

3. The dispute between the parties arose when the petitioner offered 16% of the amount of contract as EMD i.e. Rs.6,56,64,000/- which the respondent was not prepared to accept as according to the respondent the terms of the tender clearly provide that a successful bidder will have to furnish bank guarantee in the sum of Rs.7,58,08,000/- which is the 16% of the upset price i.e. 47,38,00,000/-.

4. The Petitioner was informed that if the petitioner does not pay the sum of Rs.7,58,08,000/- till 17.7.2007, the respondent would forfeit the amount of Rs.2,50,00,000/- which was deposited with the respondent by the petitioner and also cancel the contract. It is not in dispute that the petitioner was the only person who has given his bid in response to the tender notice inviting contract for collection of octroi for the aforesaid period. It is also a fact that the notice inviting tender was published three times on three occasions and there was no response which led the respondent to accept the offer of the petitioner which was below the offset price and the same was duly passed by the Standing Committee and approved by the State of Maharashtra.

5. It is the contention of the Petitioner that as

per the terms of the contract, they are only required to furnish bank guarantee of 16% of the amount of the contract value awarded to them for collection of octroi as per the terms and conditions of the notice inviting tender. On the other hand, it is the submission on behalf of Respondent No.1 that the petitioner will have to furnish bank guarantee in the sum of Rs.7,58,08,000/- which has been specifically notified in the notice inviting tender.

6. The learned counsel appearing for the petitioner submits that the terms of the tender provide for percentage of the contractual value and as the upset price was fixed at Rs.47,38,00,000/-, therefore, Rs.7,58,08,000/- being 16% of the upset price was required to be furnished as bank guarantee for performance of the contract and as the respondents have accepted the offer of the petitioner which is Rs.41,04,00,000/-, 16% of the said amount is Rs.6,56,64,000/- and therefore the respondent No.1 cannot insist on furnishing the bank guarantee in the sum of Rs.7,58,08,000/- which is 16% of the upset price given in the notice inviting Tender.

7. Mr.Walawalkar, learned Senior Advocate appearing for Respondent No.1, submitted that the stand taken by the Respondent is justified. The tender notice

specifically quantifies the amount which is to be furnished as bank guarantee for the performance of the contract and that it is a settled law that the Court in its writ jurisdiction should not interfere with the terms of the tender notice and and has placed reference in the decision rendered by the Supreme Court in the case of *Global Energy Ltd. & Anr. v/s. Adani Exports Ltd & Ors.,* **(2005) 4 SCC 435** and particularly drawn our attention to paras 9 and 10 of the reported judgment.

8. Insofar as the ratio of the decision in *Global Energy Ltd. (supra)* is concerned, there can be no issue over it. It is well settled and almost an accepted proposition that the Court has very limited scope of judicial review while examining the terms of the tender notice unless the Court finds that it is arbitrary, discriminatory or actuated by malice.

9. With due respect to the learned Counsel appearing for the Respondent, this is not a case where the petitioner has invoked the extra-ordinary jurisdiction of this Court for modifying the terms of the notice inviting tender for awarding contract for collection of octroi rather the petitioner was required to come to this Court for correctly interpreting the terms of the notice inviting tender.

10. The notice inviting tender is reproduced as under:

> "As per the order of the Sangli, Miraj and Kupwad City Municipal Corporation, for appointing Agent for collecting prevailing Octroi (together with transit fee) at the existing rate, Sealed Tenders in a specific form are being invited by the Sangli, Miraj and Kupwad City Municipal Corporation.
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> The Tender Form and Terms and Conditions in respect thereof can be obtained from the office of the Sangli, Miraj and Kupwad City Municipal Corporation, Sangli Octroi Office and the office of the Personal Assistant to the Commissioner on the office working days between 11 A.M. and 4 P.M. for the period from the date 23/05/2007 to 31/05/2007 after depositing the sum of Rs.25000/- only under a challan in Account No.189 of the Municipal Corporation with the Vasantdada Shetkari Sahakari Bank Ltd., Sangli, Vakharbhag Branch and after submitting the deposit receipt thereof to the aforesaid places or the Tender Forms can be obtained at the aforesaid place of the Municipal Corporation by paying the amount of Rs.25000/- in cash.
>
> The sealed envelopes of the Tenders filled in a proper manner will be accepted on the date 31/5/2007 upto 4.00 P.M. at the Commissioner's Office, Sangli, Miraj and Kupwad Municipal Corporation, Sangli.
>
> The Commissioner of the Sangli-Miraj and Kupwad City Municipal Corporation or his Authorised Representative shall open the Sealed Tenders submitted in time in the office of the Commissioner, Sangli-Miraj and Kupwad City Municipal Corporation, Sangli on the date 31/5/2007 at 5 P.M. in the presence of the contractors submitting the Tenders or their Authorised Representatives. If it is not possible to open the Tenders at the said time, then the time to open the Tenders will be extended without giving any reason.
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> 1) Earnest amount - A sum of Rs.2,36,90,000/- (Rupees two crores thirty six lakhs ninety thousand only) is to be paid by a Demand Draft

in a Nationalised or Scheduled Bank.

2) Security Deposit- The Contractor, whose tender will be accepted, shall, within a period not more than 4 days from the date of receipt of the Acceptance Note, deposit the amount to the extent of 16% of the minimum amount offered in the form of Bank Guarantee as Security Deposit with the Municipal Corporation. The amount accepted as Security Deposit shall be accepted in four equal parts in the form of four different guarantees. The Security Deposit amount is to the extent of Rs.7,58,08,000/- (Bank Guarantee means a Nationalised Bank or Scheduled Bank or Cooperative Bank complying with the conditions)

3) Period of recovering the octroi - 1(one) year from the date of issuance of work-order for contract of recovering Octroi.

4) Octroi recovery rate - The Agent should recover the octroi only at the rate sanctioned by the Municipal Corporation. He shall employ his own staff therefor. However, if the Agent wants experienced employees of the Municipal Corporation, then Service of such employees shall be made available on ‘loan’ basis on the condition of paying in advance every month to the Municipal Corporation their entire Salary, Leave, Pay, Pension Subscription, Administrative Service Subscription and other admissible allowances. It shall not be binding on the Municipal Corporation to provide the services of any employee asked for by the Agent.

5) Minimum amount for acceptance and procedure of paying the amount due - The Tenders for the amount less than the amount of Rs.47,38,00,000/- (Rupees Forty Seven Crores Thirty Eight lakhs only) for the period of recovering the octroi shall not be taken into consideration and shall be rejected. During the Contract period, irrespective of the amount collected in the form of octroi in first 50-week-period, the Agent shall have to pay the amount of 2% of the amount mentioned in the Contract every week. The Agent shall not get any concession, on any ground, in respect of the 2 per cent amount of the amount mentioned in the Contract. Or else, action will be taken as per the terms and conditions.

Note:- The envelope containing Tender is

> required to be sealed and the words viz. "Tender for Agency to collect Octroi for the Sangli, Miraj and Kupwad City Municipal Corporation" should be mentioned thereon in bold letters. Moreover, it is necessary to enclose with the Tender envelope a Xerox Copy of the Demand Draft by which earnest amount has been paid. Further, the closed envelope should contain two more envelopes. It is necessary that the first envelope contains the original Demand Draft and in case of Partnership Firm, a Valid Agreement (Deed) and other information and another envelope contains the tender form. or else, the tender shall not be taken into consideration.
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> If any earlier dispute over the Octroi is pending with the Sangli, Miraj and Kupwad City Municipal Corporation, then Tender-Forms shall not be given to such persons or Partnership Firms.
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> The tenders of the tenderers submitting Tenders as per the Tender Notice dated 11/05/2007 shall be held valid and they may submit Tender for additional rate. ....

11. On a plain reading of the tender notice there can be no doubt in one's mind that the amount quantified in the tender notice to be furnished as bank guarantee is 16% of the contractual value and it is by way of illustration. It provides that when the upset price has been fixed as Rs.47,38,00,000/-, 16% of it would be Rs.7,58,08,000/- which does not mean and cannot be construed that in case the respondent accepts the tender below the upset price, still the person who has been awarded the contract will have to furnish the bank guarantee in the sum of Rs.7,58,08,000/-. What the proper and correct interpretation of clause 2 Security deposit of the tender would be that it should be 16% of

the contractual value of the tender and in the present case, the sum being Rs.41,04,00,000/-, 16% of the same comes to Rs.6,56,64,000/- and if the petitioner tenders bank guarantee of the said amount it will be sufficient compliance of the requirement of security deposit as per terms of the contract. Therefore, the contention of the respondent cannot be upheld. Insofar as the State is concerned, the learned AGP submits that the State concurs with the contention of the petitioner and finds that the terms of the tender do not provide for any specific amount of which the bank guarantee is to be furnished if a contract is awarded but it provides for the percentage of the amount which should be furnished as bank guarantee towards security deposit for performance of the contract based on the value of the contract.

12. The learned counsel for the petitioner submits that the petitioner has already complied by furnishing bank guarantee of the amount of 16% of the value of the contract. Therefore, we direct the respondent to accept 16% of the value of contract to be furnished as bank guarantee towards security deposit for performance of the contract rather than insisting for Rs.7,58,08,000/- and the impugned letter calling upon the respondent to furnish bank guarantee of Rs.7,58,08,000/- is quashed and set aside.

13. Rule is made absolute in the aforesaid terms with costs. Costs to be paid by Respondent No.1 only.

(SMT.NISHITA MHATRE, J.) (J.N. PATEL, J.)